TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING #98-10

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

The applicability of the sales and use tax to retail sales and returns of automotive cores.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

The taxpayer sells automotive merchandise through its retail stores. The taxpayer charges customers core charges when they purchase automotive merchandise that can be remanufactured, to encourage customers to return cores to the taxpayer's retail stores. The taxpayer recognizes book income and federal taxable income on sales of cores. The taxpayer returns cores collected from customers to the manufacturer or a smelter, as explained hereinafter, for rebuilding.

Cores are used items of automotive merchandise returned to the manufacturer for rebuilding. The manufacturer disassembles 100 percent of the core and inspects it for possible reuse. Parts of the core that are reusable are used in making rebuilt automotive merchandise. Parts of the core that are not reusable are replaced.

Battery cores are handled differently than other automotive merchandise cores. The entire battery core is melted down at a smelter and recycled to build new batteries.

Types of automotive merchandise that have cores are: alternators, batteries, brake shoes, brake calipers, carburetors, generators, master cylinders, power steering pumps, and water pumps.

QUESTIONS

A. What are the sales and use tax consequences for the following examples of core transactions?[1]

Scenario 1:
A customer purchases a new battery for $40.00 plus a core charge of $8.00 and returns a used core for $8.00.

Scenario 2:
A customer purchases a new battery for $40.00 plus a core charge of $8.00.

Scenario 3:
A customer returns a used battery core for which the taxpayer pays the customer $8.00.

Scenario 4:
A customer exchanges a new battery, originally purchased for $40.00 plus an $8.00 core charge, for a different type of new battery that also costs $40.00 plus an $8.00 core charge.

Scenario 5:
A customer returns a used defective battery within one year of the date of the original purchase. The taxpayer replaces the defective battery at no charge to the customer because the taxpayer provides a full warranty for batteries that are determined to be defective and returned within one year. The original purchase price of the battery was $40.00 plus an $8.00 core charge. The warranty is provided by the taxpayer, not the manufacturer of the battery.

Scenario 6:
A customer returns a used defective battery two and one-half years after purchasing the battery. The taxpayer provides a five year warranty on batteries that prorates the original purchase price of the battery over the life of the warranty if the battery is determined to be defective after one year. The battery was originally purchased for $40.00 plus an $8.00 core charge. Therefore the customer pays the taxpayer $20.00 in exchange for a new battery when the customer returns the defective battery. The warranty is provided by the taxpayer, not by the manufacturer of the battery.

B. What are the sales and use tax consequences for the above examples of core transactions, if automotive cores other than batteries are involved?

RULINGS

A. 1. Sales or use tax is due upon the net amount of $40.00.

2. Sales or use tax is due upon the total amount of $48.00.

[1] For purposes of this ruling, it is assumed that the transactions involve an in-store purchase in the taxpayer's Tennessee store, or a sale by the taxpayer's out-of-state store that is shipped to a Tennessee address.

3. There is no sales or use tax arising from the described transaction.

4. There is no sales or use tax arising from the described transaction.

5. There is no sales or use tax as a result of the described transaction.

6. Sales or use tax is due on the $20.00 charge made to the customer. There is no further sales or use tax due as a result of the described transaction.

B. The sales or use tax consequences are the same for other automotive cores as for battery cores.

ANALYSIS

As a general rule, sales tax is due on the sale of tangible personal property, unless otherwise exempted by the statute. Use tax is due on the use of property that has not been subjected to sales tax. The ruling request does not state whether the taxpayer's retail stores are located inside or outside of Tennessee. Therefore, it is not clear whether the taxpayer is liable for sales tax or is collecting the use tax. However, for purpose of this ruling, as explained hereinafter, the sales/use tax distinction is not important.

T.C.A. § 67-6-202(a) levies the sales tax "at the rate of six percent (6%) on the *sales price* of each item or article of tangible personal property when sold at retail in this state." (Emphasis added.)

"Sales price" is defined by T.C.A. § 67-6-102(25) as:

> the total amount for which a taxable service or tangible personal property is sold, including any services that are a part of the sale of tangible personal property, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses, or any other expense whatsoever; provided, that cash discounts allowed and taken on sales shall not be included; provided, that "sales price" does not include any additional consideration given by the purchaser for the privilege of making deferred payments, regardless of whether such additional consideration shall be known as interest, time price differential on conditional sales contracts, carrying charges or any other name by which it shall be known; and provided further, that "sales price" does not include any federal retail excise tax imposed by §§ 4051-4053 of the Internal Revenue Code of 1954, as amended, or as such tax may be amended hereafter.

As can be seen from the above, the total amount charged, except for a few specific exclusions listed in the statute, is the proper base for the sales tax.

T.C.A. § 67-6-203 levies a use tax "at the rate of six percent (6%) of the *cost price* of each item or article of tangible personal property when the same is not sold but is used, consumed, or stored for use or consumption in this state." (Emphasis added.) The use tax is complimentary to the sales tax and generally would apply to goods purchased in a sale not subject to the sales tax, including goods purchased outside the state and imported for use in-state. In many cases, an out-of-state vendor will collect the use tax from the in-state purchaser in the same manner as the sales tax is collected.[2]

"Cost price" is defined by T.C.A. § 67-6-102(5) as:

> the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

For purpose of this ruling, it is not necessary to address whether the tax charged by the taxpayer is a sales tax or a use tax. With regard to goods purchased from a vendor located outside the state, the tax base would be the same as that for goods purchased in-state, since the terms "sale price" and "cost price" would in each case refer to the same amount, that is, the price charged to the customer.

T.C.A. § 67-6-510(a) states:

> Where used articles are taken in trade, or in a series of trades, as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference, that is, the price of the new or used article sold less the credit for the used article taken in trade.

In the case where a core is returned by the customer, the trade-in allowance provided for in T.C.A. § 67-6-510 permits the exclusion of the trade-in allowance from the tax base.[3] Tax is due on only on the amount net of trade-in allowance, $40.00. (Scenario 1)

If no core is returned, there is no trade-in allowance, so both the $40.00 base charge and the $8.00 core charge are included in the sale price. (Scenario 2)

The taxpayer's outright purchase of a used battery core from a customer[4] would fall within the "occasional and isolated" exception under which the tax does not apply to a

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[2] Such collection could be either mandatory or voluntary, depending on whether the out-of-state vendor has nexus with the taxing state. In the instant ruling request, it is not stated whether the taxpayer is required to or is voluntarily collecting the tax; however, that fact is not determinative in answering the question presented in the ruling request.

[3] TENN. COMP. R. & REGS. 1320-5-1-.02 provides further guidance in regard to the trade-in allowance. A copy of the rule is appended to this ruling.

[4] In those cases where the core is purchased from a party in the business of selling cores, the occasional and isolated sale provision does not apply; therefore this analysis is not applicable in such a case. It is assumed from the use of the term "customer" in the ruling request that a consumer, not a dealer, is involved.

sale by one not regularly engaged in the business of selling such goods. *See* T.C.A. § 67-6-102(1), TENN. COMP. R. & REGS. 1320-5-1-.09. The seller would not collect any tax from the taxpayer, and no tax would be due. (Scenario 3)

T.C.A. § 67-6-507(c) states:

> In the event purchases are returned to the dealer by the purchaser or consumer after the tax imposed by this chapter has been collected, or charged to the account of the consumer or user, or, if the dealer actually refunds the purchase price and the sales tax thereon, to the purchaser or consumer for any other reason, the dealer shall be entitled to reimbursement of the amount of tax so collected or charged by the dealer, in the manner prescribed by the commissioner; and in case the tax has not been remitted by the dealer to the commissioner, the dealer may deduct the same in submitting the dealer's return upon receipt of a signed statement of the dealer as to the gross amount of such refunds during the period covered by the signed statement, which period shall not be longer than ninety (90) days.

This provision clearly contemplates a refund to the customer of the tax on returned merchandise. When a new battery is exchanged by a customer for a different type of new battery, both having the same price ($40.00 plus the $8.00 core charge), there is not a tax consequence, since the tax due on the second battery acquired by the customer is equal to the credit for tax on the battery that was returned. (Scenario 4)

TENN. COMP. R. & REGS. 1320-5-1-.04 states:

> (1) When an item of tangible personal property, or any part thereof, is returned to a dealer pursuant to a sales, warranty, or guarantee agreement for repair or replacement, and no charge is made to the customer for the repair or replacement, there is no Sales or Use Tax due. In the event any charge for labor or a part or parts is made to a customer for the repair or replacement, the charge that is actually made to the customer is subject to the Sales or Use Tax.
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> (2) Dealers buying and using tangible personal property to fulfill sales, warranty, or guarantee obligations to a customer may purchase and use the tangible personal property without the payment of any Sales or Use Tax.

If, under a warranty, a full replacement is due, there is no tax due. (Scenario 5)

If a payment by the customer is required under a warranty, TENN. COMP. R. & REGS. 1320-5-1-.04 provides for tax on the charge actually made to the customer. (Scenario 6)

Finally, there are no special provisions in the statute or regulations providing for special tax treatment of either batteries or other automotive cores. Therefore, the responses to the questions and analysis regarding batteries would be equally applicable to transactions involving other cores.

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APPROVED: Ruth E. Johnson

DATE: 3-4-98

APPENDIX
REVENUE RULING 98-10

1320—5—I—.02 ARTICLES TAKEN IN TRADE OR "TRADE-INS".

(1) When an item of tangible personal property is taken in trade as a credit or part payment on the sale of new or used articles, the Sales and Use Tax shall be computed and paid on the net difference between the sales price of the new or used article sold and any credit actually given for the used article accepted in trade. In cases where a credit is given for property which is owned to be applied to property which is being leased, credit may be given for the amount of credit allowed; in this case, the tax will apply to any consideration after the amount of credit given is consumed, and the lessor actually begins making charges for the lease or rental of tangible personal property.

(2) Before any credit may be allowed for items taken in trade or trade-ins, the item so traded must be of a like kind and character of which is purchased, and indicated as "trade-in" by model and serial number, where applicable, on an invoice given to the customer.

(3) Any tangible personal property involved in a transaction in which a dealer gives a check or cash for tangible personal property, and where the customer agrees to pay the full purchase price of the property being bought, will not be considered as a trade-in, and no credit may be given or allowed for it. In cases where a credit memorandum is given for tangible personal property which is intended to be traded-in on the purchase of new articles of tangible personal property, the provisions of paragraph (2) of this rule must be complied with.

(4) Any recovery which may be received or allowed as a result of insurance may not be considered as a trade-in, and no credit may be given or allowed for such recoveries.

*Authority: T.C.*A. *§§ 67—I—102 and 67—6—402. Administrative History: Original rule certified June 7, 1974.*